IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 27788 of 2007(G)

OS.503/2006 OF PRL.MUNSIFF COURT, CHERTHALA

PETITIONER:

KISHORE JAYAPRASAD, S/O.JAYAPRASAD,
MATTATHIL, CHERTHALA NORTH MURI,
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.JAYAKUMAR,
ADV. SRI.P.B.KRISHNAN.

RESPONDENTS:

1. **JO PHILIP, S/O.PHILIP,**
   VANDALATHUKARIYIL, WARD NO.5,
   CHERTHALA NORTH MURI, CHERTHALA.

2. **CHERTHALA MUNICIPALITY,**
   REPRESENTED BY ITS SECRETARY,
   CHERTHALA.

R1 BY ADV. SRI.P.R.VENKETESH,
R2 BY ADV. SRI. J. OMPRAKASH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.27788/2007-G:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. NO. 503/06 FILED BY THE PETITIONER BEFORE THE MUNSIFF'S COURT, CHERTHALA.

EXT.P.2: COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT MUNICIPALITY, RESPONDENT NO.2. HEREIN, IN O.S. NO. 503/06 ON THE FILE OF THE MUNSIFF'S COURT, CHERTHALA.

EXT.P.3: COPY OF THE I.A. NO. 3534/2006 FILED BY R.1. HEREIN SEEKING HIS IMPLEADMENT IN O.S. NO. 503/06 ON THE FILE OF THE MC, CHERTHALA.

EXT.P.4: COPY OF THE OBJECTION DTD. FILED BY THE PETITIONER HEREIN IN I.A. NO. 3534/2006 IN O.S. NO. 503/2006, MC, CHERTHALA.

EXT.P.5: COPY OF THE ORDER DTD. 10/08/2007 PASSED BY THE PRINCIPAL MUNSIFF OF CHERTHALA, IN I.A. NO. 3534/2006 IN O.S. NO. 503/2006.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.27788 OF 2007

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Dated this the 1st day of December 2007

JUDGMENT

This writ petition is preferred against the order of the Prl.Munsiff's Court, Cherthala in I.A.No.3034 of 2006 in O.S.No.503 of 2006. It is an application filed by a stranger petitioner seeking his impleadment in the case as additional 2nd defendant. He is a person residing in Ward No.V and conducting cloth business in Ward No.IV. According to him, there has been collusion between the plaintiff and the Municipality and the plaintiff has obtained status quo order. It is contended that there are equally efficacious remedy available to the plaintiff under the Municipalities Act and the present petitioner has filed complaints to all and the Municipality was forced to initiate action. Therefore as a citizen he is entitled to get himself impleaded as a party in the suit. It is strongly opposed by the plaintiff and the Municipality. At the outset, it has to be stated that the Municipality has initiated action against the present plaintiff and the plaintiff has moved the Government for some exemption and it is pending and therefore he has requested the court that till a decision is taken by the Government in that

regard, Municipality be prevented from proceeding further in the matter. It is a settled principle that the plaintiff is the dominus litis. He is the person who approaches the court on payment of court fee. This Court in the decision reported in ***National Spices v. Andhra Bank(1987(2) KLT 132)*** has held that normally a plaintiff cannot be compelled to fight with persons against whom he does not want to fight. Contrary could be had only in exceptional cases. The learned Judge also points out the exceptional cases. For that, the test to be allowed is whether the relief claimed by the plaintiff will directly affect the person to be impleaded in the enjoyment of his right. Persons, whose interests are likely to be effected by the decision in the suit are entitled to come to protect their interests, especially when it is likely to jeopardize their rights. Anyhow the person sought to be added should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation. So, it is made clear that until and unless the court is satisfied that the junction of the proposed party is of imperative necessity, the court cannot insist the plaintiff to implead a stranger as a party to the suit. It is the Municipality, who had initiated action against the plaintiff and it is the plaintiff who had sought the intervention of the court for a relief against the Municipality there cannot be prima facie any collusion in that regard. I am informed that the dispute is with respect to the installation and

removal of shutter in a building which is something that comes within the province of controversy between the plaintiff and the Municipality alone. Just because the shutter is there, I do not know how it will have the characteristic of a public interest and therefore it is really a fight between a person and the Municipality attempting to protect his right to install or retain a shutter which is in his property. If the impleading petitioner has filed complaints that ends his job there, the further action has to be done by the statutory authorities and one cannot hold in the absence of any evidence that the statutory authority will function against the statutory rules and requirements.

Therefore, I feel this is a case wherein impleading should not have been allowed. I am at a loss to understand how the learned Munsiff arrived at a decision which involves public interest. As held by the learned Judge in the decision referred to above, neither the junction of this person is necessary for a proper determination of the suit nor his presence is necessary for resolving the controversy between the parties. Therefore, I hold that the order passed by the learned Munsiff suffers from infirmity which requires interference at the hands of the court.

Therefore, the writ petition is allowed and the interim application, I.A.No.3034 of 2006 in O.S.No.503 of 2006 stands dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-